

the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section : (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of

any segment or of the entire System will not be considered finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee shall reconstruct or upgrade the System to be capable of sixty (60) activated channels before the end of year ten (10) of the Franchise, unless relieved of its obligation to do so by the City. In order to be relieved of this obligation, the Franchisee may petition the City by year eight (8) and present documentation substantiating that said upgrade is not warranted by community needs. Failure to upgrade as directed by this Franchise, unless granted relief from said obligation, shall constitute a material breach pursuant to Section 13 of this Franchise.
2. As part of the construction sequence plan required in Section II B hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

II. CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix B, which

Exhibit shall be incorporated herein and made a part of this Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages for failure to meet such accepted construction schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced offering and distribution of the full range of Service throughout the Franchise Area. The temporary exception areas or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
 - (i) The areas within the Franchise Area where the cable system will be initially available to Subscribers, including a schedule of Construction as proposed; and
 - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

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BUILD SCHEDULE FOR FRANCHISE AREA H

APPENDIX B

CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plant of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
 - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain

the same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/2" long with figures 0.4".

B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DBS, or other distribution system in said structure, including any conduit used in connection with any other system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section, "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of this Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation", "activated", etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the headends or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the System to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered

finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of Subscriber Service.

C. Reconstruction Requirements

1. The Franchisee shall reconstruct or upgrade the System to be capable of sixty (60) activated channels before the end of year ten (10) of the Franchise, unless relieved of its obligation to do so by the City. In order to be relieved of this obligation, the Franchisee may petition the City by year eight (8) and present documentation substantiating that said upgrade is not warranted by community needs. Failure to upgrade as directed by this Franchise, unless granted relief from said obligation, shall constitute a material breach pursuant to Section 13 of this Franchise.
2. As part of the construction sequence plan required in Section II B hereof, the Franchisee shall prepare a cut over plan indicating the sequence in which subscribers will be disconnected from the old system plant and reconnected to the new system plant. The time subscribers are without service should be minimal. The Franchisee shall provide credit to any subscriber who is without service for more than one day of prime time viewing.

CONSTRUCTION SCHEDULE AND SEQUENCE

A. Construction Schedule

1. The Franchisee shall file a construction plan acceptable to the Department within 6 months from the effective date of the franchise, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and plant activation for the rebuild construction. For system upgrades, including converter change outs, similar information appropriate to the form of the upgrade shall be delineated.
2. Activation Milestones. The Franchisee shall develop an activation milestone schedule in quarter year increments based upon the construction plan required by the foregoing Section II.A.1. The initial version of the milestone schedule, and any modification to said initial milestone schedule shall, upon its approval by the Board, be set forth as Exhibit 1 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this

Appendix B and the franchise Agreement. The Franchisee shall complete and activate the entire system throughout the Franchise Area by no later than the date specified in Exhibit 1.

3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the general public residing in the Franchise Area by not having available the services proposed by the Construction of the System in accordance with the construction plan, activation milestone schedule and construction sequence plan required pursuant to Section 4.14 and Appendix B herein. Therefore, liquidated damages for failure to meet such accepted construction schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Construction of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement; and (iii) commenced offering and distribution of the full range of Service throughout the Franchise Area. The temporary exception areas or other abatement of the Company's service obligations pursuant to Sections 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements. The plan shall consist of a map of the entire Franchise Area and shall clearly delineate the following:
 - (i) The areas within the Franchise Area where the cable system will be initially available to Subscribers, including a schedule of Construction as proposed; and
 - (ii) Areas within the Franchise Area where extensions of the cable System cannot reasonably be done due to the lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 6 months of the effective date of this franchise. This plan shall delineate the sequence of the construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.
2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without the prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations from the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission of the construction plan (II.A.1.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.1.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

BUILD SCHEDULE FOR FRANCHISE AREA I

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APPENDIX B
CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plan of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
 - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain the

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same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DES, or other distribution system in said structure, including any conduit used in connection with any other

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system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:

- vacant or abandoned buildings;
- inability of the Franchisee to obtain access (physical or constructive) to a structure;
- situations which substantially and adversely affect the economic viability of the system; and
- such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of the Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation," "activated," etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the

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headends, or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of subscriber service.

C. Upgrade Requirements

1. The Franchisee shall upgrade the System to be capable of seventy-seven (77) activated analog channels before December 31, 1998.
2. As part of the upgrade sequence plan required in Section II B hereof, the Franchisee shall prepare a plan indicating the sequence of areas in which subscribers will experience a short interruption of service. The time subscribers are without service should be minimal, in any event, always less than 24 hours. The Franchisee shall provide credits to any subscriber consistent with the provisions of Section 6.

II. UPGRADE SCHEDULE AND SEQUENCE

A. Upgrade Schedule

1. The Franchisee shall file an upgrade plan acceptable to the Department within 3 months from the effective date of this Amendment, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and activation for upgrade. The schedule shall reflect time frames and other measurements by "node area." The upgrade plan shall consist of a map of the entire Franchise Area and shall clearly delineate the upgrade schedule by node area.

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2. Activation Milestones. The Franchisee shall complete and activate the entire upgrade throughout the Franchise Area by no later than December 31, 1998 by completing 127 nodes. Beginning with the third calendar quarter of 1994, at least eight (8) nodes will be completed; for all subsequent quarters at least seven (7) nodes will be completed by the end of each calendar quarter, until the last quarter of 1998.
3. Liquidated Damages. It would be impractical and extremely difficult to determine the damages which would be incurred by the City or general public residing in the Franchise Area by not having available the upgrade in accordance with the upgrade plan, activation milestone schedule and sequence plan required herein. Therefore, liquidated damages for failure to meet such accepted upgrade schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. Upgrade of the System shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; and (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement. The temporary exception areas or other abatement of the Company's service obligations pursuant to Section 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 3 months of the effective date of this amendment. This plan shall delineate the sequence of the

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construction or upgrade within the Franchise Area. The sequence areas should be designated using street names as boundaries.

2. The Franchisee shall not materially deviate from the initial plan for the sequence of Construction without prior approval of the Department provided that the Franchisee shall provide to the Department a written explanation and justification for deviations for the approved initial sequence plan.
3. The initial version of, and any modification to, the construction sequence plan shall, upon its approval by the Department, be set forth as Exhibit 2 to this Appendix B, which Exhibit shall be incorporated herein and made a part of this Appendix B and this Agreement.
4. Actual physical Construction may not commence prior to the submission and approval of the construction plan (II.a.I.), activation milestone schedule (II.A.2.) and construction sequence plan (II.B.I.).
5. Special agreements. Nothing in this section shall be construed to prevent the Franchisee from serving areas not covered by this section upon an agreement with developers, property owners, or residents.

BUILD SCHEDULE FOR FRANCHISE AREA J

APPENDIX B
CONSTRUCTION/ACTIVATION PLAN

I. CONSTRUCTION TERMS

A. Location of Cable

1. The Company shall install all cables in a manner consistent with existing telephone or public utility lines. Where both such lines or facilities are underground at a particular location (other than on private property), the Company shall install its cables underground, except as otherwise provided in Section 4 of this Franchise and Section 2 of this Appendix (B) or as otherwise approved by the agencies of the City having jurisdiction over such matters. Where either of such lines or facilities are above ground at a particular location, the Company may elect to install its cables above ground.
2. The Company shall use existing utility poles, ducts or conduits for the installation of cable, except as provided in the next paragraph.
3. Wherever existing telephone or public utility poles, ducts or conduits cannot accommodate the installation of the cable plan of the Franchisee or whenever the telephone or public utility company(ies) refuse to make available their existing facilities, or construct new facilities, for the installation of the cable plant of the Company, the Company may, consistent with Section 4.19 of this Agreement, install its own poles, ducts or conduits, as appropriate, provided that nothing herein shall be deemed to relieve said utility companies of their existing obligation to make available their poles, ducts, conduits, and other facilities for the installation of the System. For purposes of this subsection, the term "facilities" shall include, without limitation, facilities providing underground access from the main ducts into each block.
4. Identification of Poles
 - a. Poles set by the Franchisee shall be numbered immediately by the Franchisee. A record shall be maintained of the location, number, length and year of all poles upon installation, for the purpose of identification. Numbers shall be in a consecutive series and shall have distinguishing letters or initials to signify original ownership. The pole number is a permanent designation of the original ownership for a specific location and should remain with the pole until its removal from service. If the pole is replaced by the original owner, the new pole should preferably retain the

same number, but if desired, a new number may be assigned. When a number has been lost or destroyed, a duplicate number should be provided, but where this is impracticable, a new number shall be placed and recorded as appropriate.

- b. When the original owner is the relinquishing party in a two-party joint use, the pole shall be renumbered by the other owner; in multiparty joint use, one of the remaining owners as agreed upon shall renumber the pole for record purposes. Where the entire interest is purchased, the purchaser shall renumber the pole.
- c. The pole number should be placed between 12 ft. and 6 ft. above grade. On streets or alleys the number should preferably be placed on the side of the pole facing approaching traffic. On property lines or easements the number should be placed on the side of the pole facing the street used for location reference, which should correspond to the frontage of the lot on which the pole is located.
- d. The pole number may consist of an aluminum ribbon 1 1/8" wide and .02" thick, with raised letters 1/2" in height embossed on the plate with suitable die or any other suitable material. The plate shall be of length to suit requirements. 4d aluminum nails should preferably be used for fastening the number to the pole.
- e. Poles may be marked with standard nails to denote length and year set, and nails, if used, shall be placed on the pole immediately upon installation. Marking nails, if used, shall be placed immediately below the pole number, with the length nail on the left and the year nail on the right. The standard marking nail shall consist of a No. 3 (ASWG) wire nail, 2 1/4" long with figures 0.4".

B. Specific Terms

- 1. As provided in this Agreement, the Company shall comply with all applicable City laws, rules, regulations, codes, and other requirements in connection with the construction of the System.
- 2. The installation of all cables, wires, or other component parts of the System in any structure shall be undertaken in a manner which does not interfere with the operation of any existing MATV, SMATV, MDS, DES, or other distribution system in said structure, including any conduit used in connection with any other

system. For the purpose of routine maintenance, repair, connection, installation, or disconnection, all System wiring in any structure shall be accessible from a public hallway, roof, basement, stairwell, or other public area in said structure.

3. The Franchisee shall construct the System so as to meet the service obligations set forth in Section 5 of this Agreement. In the event that the Franchisee encounters extraordinary circumstances in connection with the construction or operation of the System, the Franchisee may, pursuant to Section 4.3 of this Agreement, apply to the Department for appropriate relief. To the extent possible, said relief shall be in the form of a temporary exception of the service obligation of the Franchisee until said circumstances cease. For purposes of this Section "extraordinary circumstances" means that the Department has made a finding that, at a minimum, there exists:
 - vacant or abandoned buildings;
 - inability of the Franchisee to obtain access (physical or constructive) to a structure;
 - situations which substantially and adversely affect the economic viability of the system; and
 - such other conditions as the Department and the Company may from time to time agree to.

In considering a petition for relief under this Section, the Department shall attempt, in any determination, to limit such relief to the smallest geographical unit practicable, consistent with the intent of the Section: (i) to establish a mechanism to provide relief where "extraordinary circumstances" (as defined) are encountered and (ii) not to arbitrarily deny Service to any portion of the Franchise Area.

4. The terms "activation," "activated," etc., in connection with the Construction shall mean that strand has been put up, and all necessary cable (including trunk and feeder cable) has been lashed or, for underground construction, that all cable has been laid and trenches refilled, all road surfaces restored, and, except as prevented by weather conditions or delayed because of seasons, landscaping restored; that all amplified housings and modules have been installed (including modules for return path signals if proposed); that power supplies have been installed, and all bonding and grounding have been completed; that all necessary connectors, splitters, and taps have been installed; that construction of the

headends, or hubs have been completed, and all necessary processing equipment has been installed; and that any and all other construction necessary for the system to be ready to deliver Cable Service to Subscribers has been completed. Balancing and initial testing shall have been conducted on each completed segment of the cable System before the direct marketing of such segment begins. It is expected that segments of less than the entire System will be activated, balanced and tested when completed. Construction of any segment or of the entire System will not be considered finally complete until proof of performance tests have been conducted on such segment (or, in the case of the entire System, on all segments of the cable System) and any problems found during testing have been corrected. The term "activation" shall not include marketing and the installation of subscriber service.

C. Upgrade Requirements

1. The Franchisee shall upgrade the System to be capable of seventy-seven (77) activated analog channels before December 31, 1998.
2. As part of the upgrade sequence plan required in Section II B hereof, the Franchisee shall prepare a plan indicating the sequence of areas in which subscribers will experience a short interruption of service. The time subscribers are without service should be minimal, in any event, always less than 24 hours. The Franchisee shall provide credits to any subscriber consistent with the provisions of Section 6.

II. UPGRADE SCHEDULE AND SEQUENCE

A. Upgrade Schedule

1. The Franchisee shall file an upgrade plan acceptable to the Department within 3 months from the effective date of this Amendment, unless the filing date is extended by the Board which may be appealed to the Council. The plan shall delineate a schedule of the mileage and/or time frame for design, execution of pole attachment agreements, underground construction permits, make ready engineering, make ready construction, strand, underground conduit and cable installation, splicing and activation for upgrade. The schedule shall reflect time frames and other measurements by "node area." The upgrade plan shall consist of a map of the entire Franchise Area and shall clearly delineate the upgrade schedule by node area.

2. **Activation Milestones.** The Franchisee shall complete and activate the entire upgrade throughout the Franchise Area by no later than December 31, 1998 by completing 20 nodes. Beginning with the third calendar quarter of 1994, at least two (2) nodes will be completed by the end of each calendar quarter of 1994; for all subsequent quarters at least one (1) node will be completed by the end of each calendar quarter, until last quarter of 1998.
3. **Liquidated Damages.** It would be impractical and extremely difficult to determine the damages which would be incurred by the City or general public residing in the Franchise Area by not having available the upgrade in accordance with the upgrade plan, activation milestone schedule and sequence plan required herein. Therefore, liquidated damages for failure to meet such accepted upgrade schedules shall accrue at the amount of \$500.00 per day, every calendar day, for each missed activation milestone and an additional \$1,000.00 per day, every calendar day, for delay beyond the final completion and activation date as indicated in Exhibit 1 to this Appendix B. Liquidated damages shall accrue irrespective of any modifications to the schedules in Exhibit 1 approved by the Board, unless the Board finds that such modifications are warranted as a result of force majeure or unreasonable delays caused by the Department of Water and Power, General Telephone Company or Pacific Telephone Company or other unforeseen or unavoidable factors that may arise that are beyond the control of the Company and which could not have been prevented. Determinations by the Board may be appealed to the Council.
4. **Upgrade of the System** shall be considered completed when the Company has notified the Department, in writing, that the Franchisee has (i) installed all cables and associated equipment and system devices, excluding converters, necessary for Subscribers to receive Services distributed over the System; and (ii) passed all initial proof-of-performance tests, as provided in Appendix A to this Agreement. The temporary exception areas or other abatement of the Company's service obligations pursuant to Section 4.3 and 5 of this Agreement shall not prevent the issuance by the Department of either of the foregoing written acknowledgements of completion and such acknowledgements may be issued subject to any such abatements.

B. Construction Sequence

1. In addition to the construction plan and milestone schedule, the Franchisee shall file an acceptable construction sequence plan within 3 months of the effective date of this amendment. This plan shall delineate the sequence of the